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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,194	12/20/2001	Bryan M. Elwood	87289.1741	5973
30734	7590	12/18/2003	EXAMINER	
BAKER + HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304			BHAT, ADITYA S	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/022,194

Applicant(s)

ELWOOD ET AL.

Examiner

Aditya S Bhat

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-16, 18-30 and 32-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16, 18-30 and 32-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Levi (USPN 6,658,586).

With regards to claim 2, Levi (USPN 6,658,586) teaches a device that provides diagnostic and control capability for equipment from a remote location comprising:

an apparatus detached from the equipment comprising a display device, (630; See figure 14)

an input device, software executed by the apparatus and a communications device; (See figure 2) and

a controller attached to the equipment to enable monitoring of the equipment by the apparatus through the communications device. (Col.3, lines 38-46) wherein a unique identifier is stored on the controller (Col.8, lines 33-37)

With regards to claim 3, Levi (USPN 6,658,586) teaches the controller is queried by the apparatus. (710; figure 11)

With regards to claim 4, Levi (USPN 6,658,586) teaches the controller transmits data to the apparatus without being queried. (360; figure 6)

With regards to claim 5, Levi (USPN 6,658,586) teaches the data being transmitted is an indication detected by the controller of an equipment problem. (Col. 15, lines 22-32)

With regards to claim 6, Levi (USPN 6,658,586) teaches the controller transmits data in response to the query. (710; figure 11)

With regards to claim 7, Levi (USPN 6,658,586) teaches the controller is instructed by the software code to gather specific data about the equipment and transmitted to the apparatus. (Col. 26, lines 31-39)

With regards to claim 8, Levi (USPN 6,658,586) teaches the data is compiled by the software in a user-preferred manner. (196; figure 5)

With regards to claim 9, Levi (USPN 6,658,586) teaches the data is collected for a specific period of time after which time the data is lost and a new data collection period begins. (Col. 4, lines 43-46 )

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With regards to claim 10, Levi (USPN 6,658,586) teaches the data is available for review by a user on the apparatus during the specific period of time.(see figure 6)

With regards to claim 11, Levi (USPN 6,658,586) teaches the software code is programmed with acceptable operational limits for the equipment associated with the identifier. (Col. 15, lines 22-33)

With regards to claim 12, Levi (USPN 6,658,586) teaches the limits are compared to the data retrieved from said controller, if results are within the acceptable operational limits the data no further action is taken, if results are not within acceptable said limits then apparatus carries out a predefined task. (Col. 15, lines 25-30)

With regards to claim 13, Levi (USPN 6,658,586) teaches the predetermined task is alerting the user as to the condition. (Col.15, lines 30-35)

With regards to claim 14, Levi (USPN 6,658,586) teaches the predetermined task is alerting a technician as to the performance of the equipment (253; figure 7) (Col. 5, lines 39-42 )

With regards to claim 15, Levi (USPN 6,658,586) teaches the predetermined task is transmitting data to the equipment to adjust certain operational features of the equipment. (364;figure 6)

With regards to claim 16, Levi (USPN 6,658,586) teaches the data is recorded and stored and available for review by the user. (see figure 2)

With regards to claim 18, Levi (USPN 6,658,586) teaches a method that provides remote diagnostic and control capability for equipment comprising:

monitoring the equipment through a controller attached the equipment with a remote apparatus comprised of an input device, display device, a communications device and software code executed by the apparatus.(Col. 3, lines 38-47)

storing a unique identifier on the controller that is attached to the equipment (Col.8, lines 33-37)

With regards to claim 19, Levi (USPN 6,658,586) teaches selecting with the software code specific data collection wherein the software code records the data of pre-selected features of the equipment. (66; figure 2)

With regards to claim 20, Levi (USPN 6,658,586) teaches querying the controller with request for data, wherein the data is transmitted to the apparatus. (362;figure 6)

With regards to claim 21, Levi (USPN 6,658,586) teaches the step of responding and transmitting a response to the query. (84; figure 6)

With regards to claim 22, Levi (USPN 6,658,586) teaches the step of compiling of the data by the apparatus and stored for a period of time. (Col. 4, lines 43-47)

With regards to claim 23, Levi (USPN 6,658,586) teaches data collection is gathered for a fixed period of time after which the data is removed and a new data period is commenced. (update action item/status; Figure 7)

With regards to claim 24, Levi (USPN 6,658,586) teaches the data is recorded and stored and available for review.(32,60;figure 6)

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With regards to claim 25, Levi (USPN 6,658,586) teaches the step of comparing the data received from the controller with pre-selected limits, if the results of the comparison are outside of the acceptable limits then the apparatus proceeds with a predefined action; if the results of the comparison are with the acceptable limits then no further action is taken. (410;figure 6A)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 32-38 are rejected under 35 U.S.C. 102(a) as being anticipated by Viard et al. (USPN 5,946,922).

With regards to claim 32, Viard et al. (USPN 5,946,922) teaches a device that provides remote diagnostic and control capability for equipment comprising:

remote means for monitoring the equipment the means for monitoring is an apparatus that is comprised of an input device, display device a communications device and software coded executed by the apparatus (Col. 2, lines 48-51) and

means for controlling the equipment through the means for monitoring, wherein the means for controlling is attached to the equipment. (Col. 2, lines 65-67)

With regards to claim 33, Viard et al. (USPN 5,946,922) teaches a means for controlling is a controller. (Col. 3, line 1-3)

With regards to claim 34, Viard et al. (USPN 5,946,922) teaches means for selecting with software code specific data collection wherein the software code records the data of pre-selected features of the equipment.

Although Viard et al. does not explicitly state the use of software in (USPN 5,946,922), Viard et al. does teach remote monitoring and controlling of equipment using a controller. It would be inherent for the controller to include some software or code in order for the controller to perform these functions.

With regards to claim 35, Viard et al. (USPN 5,946,922) teaches means for compiling the data from the equipment by querying the controller with request for data. (Col.2, lines 55-64)

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With regards to claim 36, Viard et al. (USPN 5,946,922) teaches data collection is gathered for a fixed period of time after which the data is removed and a new data period is commenced. (Col. 6, lines 55-59)

With regards to claim 37, Viard et al. (USPN 5,946,922) teaches the data is recorded and stored and available for review.

With regards to claim 38, Viard et al. (USPN 5,946,922) teaches comparing the data received from the controller with pre-selected limits, if the results of the comparison are outside of the acceptable limits then the apparatus proceeds with a predefined action, if the results of the comparison are within the acceptable limits then no further action is taken. (Col. 5, lines 55-57)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levi (USPN 6,658,586).

With regards to claim 26-30, Levi (USPN 6,658,586) shows generating an alert (412;figure 6A) (32; figure 15) (93 ;figure 5)

Although Levi (USPN 6,658,586) does not show each of the methods of alerting the user, it would have been obvious to one skilled in the art at the time of the invention to send an alert in numerous ways.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d-1647 (1987).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viard et al. (USPN 5,946,922).

With regards to claim 39-43, Viard et al. (USPN 5,946,922) shows generating an a message for the purpose of detecting anomalies (Col.2, lines 57-64)

Although Levi (USPN 6,658,586) does not show each of the methods of alerting the user, it would have been obvious to one skilled in the art at the time of the invention to send the message in numerous ways in order to alert the user.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d-1647 (1987).

### ***Response to Arguments***

Applicant's arguments with respect to claim2-16, 18-30 and 32-43 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lederer et al. (USPN 5,225,997) teaches a automatic monitoring and remote reporting device, Sandelman et al (USPN 6,437,691) teaches a electronic message delivery system utilizable in the monitoring of remote equipment and method of same, Tormintsu teaches monitoring system for food storage device, Chanvin et al. teaches a device for aiding maintenance of an electromechanical installation having


automatic monitoring and control means, Levi (USPN 6,636,983) teaches a method and system for uniform resource locator status tracking, Ehlers et al. (USPUB 2001/0010032) teaches a energy management and building automation system, and Defosse (USPUB 2002/0016829) teaches a remote data acquisition transmission and analysis system including handheld wireless equipment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aditya S Bhat whose telephone number is 703-308-0332. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 703-308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-5841 for regular communications and 703-308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Aditya S. Bhat  
December 10, 2003

  
John Barlow  
Supervisory Patent Examiner  
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